THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

WRIT PETITION No.34416 of 1997

Date: .08.2007

Between:

K.Vajram

… Petitioner

AND
Labour Court-III, Hyderabad

And another.

… Respondents

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

WRIT PETITION No.34416 of 1997

ORDER:-

The award dated 11.12.1995 passed in I.D.No.578 of 1992 (old I.D.No.164 of 1992) by the Labour Court-III, Hyderabad, to the extent it has denied the petitioner backwages, is under challenge in this writ petition.

The petitioner, after going through the regular selection process, was appointed as Conductor in Tandur Depot of Andhra Pradesh Road Transport Corporation (for short 'the Corporation') on 31.10.1989. On 28.3.1990, he was served with a charge sheet for having concealed the fact of his removal from service while he was working in Tandur depot and for securing employment by concealing the said fact. A domestic enquiry was conducted and following the same, the petitioner was removed from service by respondent No.2 vide his order dated 10.9.1991. A review petition filed by the petitioner to the Regional Manager, having been rejected, the petitioner approached the Labour Court under Section 2-A(2) of the Industrial Disputes Act 1947 (for short 'the Act'). The Labour Court by its award impugned in this writ petition directed reinstatement of the petitioner with continuity of service with attendant benefits, but denied backwages by applying the principle "no work no pay". The present writ petition is filed questioning the

award to the extent of denial of backwages.

Heard Sri A.K.Jaya Prakash Rao, learned counsel for the petitioner and the learned Standing Counsel for the Corporation.

The learned counsel for the petitioner submitted that the Labour Court, having set aside the orders passed by the disciplinary and appellate authorities ought to have awarded backwages in favour of the petitionr. The learned counsel relied upon the judgments in **U.P.State Brassware Corpn.,Ltd., and Another Vs. Uday Narain Pandey**[1] and **J.K.Synthetic Limited Vs. K.P.Agarwal**[2].

Per contra, learned Standing Counsel for the Corporation submitted that the fact of the petitioner's earlier removal from the post of temporary conductor on the ground of irregularities committed by him is not in dispute and that therefore, the Labour Court having weighed the facts and circumstances exercised its discretion under Section 11-A of the Act by denying backwages to the petitioner. He therefore submitted that the discretion exercised by the Labour Court need not be interfered with by this Court while exercising the power of judicial review.

I have carefully considered the respective submissions of both the learned counsel and perused the record.

It is not in dispute that the petitioner was appointed as Conductor on 4.4.1986, albeit temporarily (Ex.M2) and on 9.5.1986 respondent No.2 issued proceedings vide which the petitioner was informed that his services were no more required and accordingly his services were terminated with immediate effect. Respondent No.2 while terminating the services invoked condition No.3 of the

appointment order under which his services were liable to be terminated at any time without notice. The petitioner again applied for the post of Conductor vide his application dated 27.6.1989 and after going through the selection process he was appointed by the Divisional Manager, Ranga Reddy Division on 31.10.1989 and posted to Tandur Depot. On finding that the petitioner was earlier removed for indulging in cash and ticket irregularities, disciplinary proceedings were initiated and following two charges were framed:

> " 1. For having concealed the fact of having been removed from service from Tandur Depot having been involved in a case of cash and ticket irregularities and subsequently secured employment in R.R.Division, suppressing the fact of removal at Tandur Depot which constitutes misconduct under Regulation 28(xxii) of APSRTCA Employees Conduct Regulations, 1963.
>
> 2. For having denied the suppressed fact of having worked as Conductor at Tandur Depot earlier and removed from service with effect from 9.5.1986 and thus cheated the Corporation which constitutes misconduct under Rule 9(2) (iv) of CCCA Regulation 1967."

The Enquiry Officer, on the basis of the evidence recorded by him found the petitioner guilty of both the charges. Respondent No.2 in his order dated 15.3.1991 by which the petitioner was removed from service, stated as under:

> "The conductor in his reply to the charge sheet submitted at a later date stated that he was engaged as Conductor on daily wage of Rs.25/- per day's work and was disengaged on 9.5.1986. He was neither sponsored by the employment exchange nor was selected by the selection committee of APSRTC but his employment was on the emergency basis to meet the

> exigencies of the Corporation from 4.4.86 to 9.5.86 and since it was not a regular appointment he did not mention while securing employment from 6.1.90. As such it was not a concealment with mala fide intention on his part. During the course of enquiry he stated that he was appointed as a casual conductor in the year, 1986 and due to his involvement in C & T irregularities on 4.5.86 he was removed from service on 9.5.86. While searching for a job in response to paper advertisement in the year 1989 applied for the post of Conductor in R.R.Division duly suppressing the fact of his earlier appointment as conductor at Tandur Depot and his removal due to involvement in c & T irregularities case for the fear that the authorities may refuse giving employment to him. He further deposed that he was unaware of the fact that he would be removed from service if the authorities came to know about his past employment. He further pleaded that his previous employment was only on casual basis and he did not think or feel the need of informing the corporation officials about his previous employment in the year 1986 and also since he was asked by anybody about his previous appointment."

Before the Labour Court the petitioner pleaded that since the form in which he applied for fresh employment did not contain any column about his antecedents, his failure to disclose previous removal did not constitute misconduct. This contention raised before the Labour Court is evidently an after thought in view of his clear admission made before the Enquiry Officer that due to his fear of the Corporation denying him of employment if he discloses the fact of his earlier removal, he did not reveal the factum of his earlier removal. A perusal of the award of the Labour Court shows that it has proceeded on the premise that except the statement of

the petitioner given before the enquiry officer that his services were terminated due to cash and ticket irregularities and that his revision was also rejected, there was no record which reveal the reason for which his services were terminated. It has also held that Ex.M.5, the order of termination of the petitioner merely shows that it is a case of simple termination. A perusal of Ex.M-5 shows that the Labour Court fell into a factual error in holding that it was a case of simple termination. It is relevant to extract the order dated 9.5.1986 (Ex.M5) to the extent it is relevant:

> "To
> Sri K.Vajram, B/410,
> Casual Conductor of Tandur Depot.
>
> // through ST1/Tandur Depot//
>
> Sub: Cash and ticket irregularities committed by Sri K.Vajram, B/410 Conductor of Tandur depot on 4.5.86 – Regarding.
> Ref: Appt.Order No.E1/232(1)/86-TDR, dt.4.4.86.
> ***
> It is to inform that your services are no more required. Your services are therefore terminated with immediate effect as per terms and conditions under item No.3 of your appointment order cited above. Further your entire security deposit is forfeited to the Corporation.
>
> Sd/-
> Depot Manager, Tandur."

Evidently the Labour Court has not read the matter contained against the column 'subject' in the order dated 9.5.1986. The very premise on which the Labour Court proceeded to conclude that the petitioner's earlier termination was a case of

termination simplicitor is wholly erroneous. I also find that the approach of the Labour Court in not giving any weight to the sworn statement made by the petitioner before the enquiry officer is rather strange and cannot be sustained. I have carefully gone through the statement of the petitioner recorded by the enquiry officer (its authenticity has not been questioned by the petitioner). In his statement recorded on 18.7.1990, the petitioner categorically deposed that he concealed the fact of his previous employment. It is appropriate to extract the relevant portion of his statement:

> " I have concealed the fact of my previous employment in TDR depot in the year 1986 and also my removal from TDR depot on 9.5.86 due to my involvement in C & T irregularities, at the time of applying for the post of conductor in RR district for the second time in the year 1989 in order to get job of conductor in corporation because if authorities know about my earlier work and removal there were no chances of getting employment again in corporation."

In the face of the above reproduced statement of the petitioner whereunder he unequivocally admitted the charge of concealment, the Labour Court held that the charges against the petitioner were not proved. Very curiously, the Corporation has not questioned this part of the award and reinstated the petitioner without any demur. Since it failed to question the award, which in my considered opinion is wholly perverse, this part of the award has become final.

As regards the question of backwages, to the fortune of the Corporation, the Labour Court denied the petitioner the said benefit on the purported ground of "no work no pay". Whether this ground

of denial of backwages to the petitioner was sustainable or not, in my considered view the conclusion cannot be interfered with. Under Section 11-A of the Act the Labour Court is vested with the discretion to lay-down the terms and conditions subject to which an employee discharged or dismissed from service is to be reinstated.

In **U.P.State Brassware Corpn.,Ltd.,** (1 supra) the Supreme Court held that award of backwages on the reinstatement of an employee is not automatic.

The judgments relied upon by the learned counsel for the petitioner as referred to above have no application to the facts of the present case. Having considered the facts and circumstances of the case, I am of the view that the petitioner who admitted to have concealed the factum of his earlier removal from service for indulging in cash and ticket irregularities is not entitled to claim any backwages and at any rate this Court is not inclined to extend its discretionary jurisdiction in his favour by substituting the view taken by the Labour Court for denying the backwages.

For the reasons aforementioned, the writ petition fails and is accordingly dismissed.

C.V.NAGARJUNA REDDY,J

Dt : 22.08.2007
Mdaa.

[1] (2006) 1 SCC 479
[2] (2007) 2 SCC 433